

**NOV 21 2006**

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November 21, 2006

**VIA FACSIMILE**  
**EXPEDITED PROCEDURE**

To: Examiner Siegfried E. Chencinski  
Group Art Unit No. 3628  
U. S. P. T. O.

Facsimile No. 571-273-8300

From: Phillip E. Miller

Facsimile No. 703-761-2375

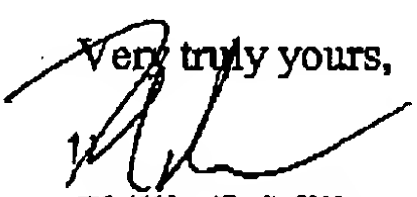
Re: Filing of Reply Brief  
U. S. Patent Application Serial No. 09/850,383  
Our Ref: YOR.584

Dear Examiner:

Enclosed please find a Reply Brief which is filed in response to the Examiner's Answer dated September 22, 2006, and the Examiner's Answer dated October 20, 2006, and which should place the above referenced Application in condition for immediate allowance.

Thank you in advance for your kind consideration of this case.

*Very truly yours,*

  
Phillip E. Miller

PEM/kks  
Enclosure

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NOV 21 2006

Appellant's Brief on Appeal  
S/N: 09/850,383

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Brenda Dietrich

Serial No.: 09/850,383

Group Art Unit: 3628

Filed: May 7, 2001

Examiner: Chencinski, Siegfried E.

For: **AUCTIONS FOR MULTIPLE ITEMS WITH CONSTRAINTS SPECIFIED  
BY THE BIDDERS**

Commissioner of Patents  
Alexandria, VA 22313-1450

**APPELLANT'S REPLY BRIEF**

Sir:

In response to the Examiner's Answer dated September 22, 2006 and the  
Examiner's Answer dated October 20, 2006 (which does not reference the September 22nd  
Answer but is substantially the same as the September 22nd Answer), Appellant states as  
follows:

**REMARKS**

**Claim 1**

Appellant would again point out that the Examiner is construing the term  
"constraint" in a manner which is 1) contrary to its commonly accepted meaning in  
the art, and 2) certainly contrary to the meaning of the term as used in the  
Specification.

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The Examiner alleges that he has "been unable to find a special definition of the term "constraint" in Appellant's specification", and therefore, the Examiner feels free to construe the term "constraint" to include the simple "bidding rule" disclosed in Ausubel. However, as Appellant pointed out in his brief, the Examiner conveniently ignores one important statement in the Application:

"[t]his invention is not concerned with the particular bidding rules of the auction, only with the methods and systems used to select the winning bids" (Application at page 15, lines 6-7; emphasis added).

Based on this statement alone it is unreasonable to equate the "constraint" in the claimed invention with the "bidding rules" of Ausubel.

Moreover, the Specification is replete with examples of the "constraint" contemplated by the claimed invention. For example, the specification describes a budget constraint (Application at page 9, line 4), maximum quantity constraint (Application at page 9, line 8), minimum quantity constraint (Application at page 9, line 14), and so forth, and states that these constraints may be included in an integer program which may be solved to determine the set of winning bids (Application at page 10, line 16-page 11, line 11).

Appellant submits that these examples of a constraint would clearly indicate that the term constraint may be construed to mean "a restriction of the feasible solutions in an optimization problem", which is the common meaning of the term in the field of mathematics. Clearly, the "bidding rules" of Ausubel are completely different from these examples of "constraints" in the Application, and thus, clearly the "bidding rules" are different from the "constraints" in the claimed invention.

Further, the Examiner on pages 13-15 attempts to provide examples of Ausubel's use of the expression "constraint". However, the only instance of "constraint" in these "examples" is at col. 34, lines 34-54 in Ausubel which states "... without our previous constraint that **only one bid per user is accepted...**" (emphasis added). Thus, the only use of the term "constraint" in the "examples" give by the Examiner, refers to a simple

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**bidding rule of the auction** and not a "constraint specified by a participant in the auction" as in the claimed invention.

Further, the Examiner responds to Appellant's use of wikipedia.org to help indicate a common use of the term "constraint" in the field of mathematics, stating that "Appellant would need to provide a deeper and broader exposition from the art of qualitative aids to decision making, perhaps with valid expert testimony....". However, Appellant would point out that the wikipedia.org definition of constraint (i.e., "a restriction of the feasible solutions in an optimization problem") helps to clarify the inventor's use of the term in the "constraint" in the Application.

Moreover, it is telling that the Examiner has not made reference to any authority to support his baseless allegation that Appellant's proposed construction of the term "constraint" is "artificial, unreasonable and unacceptable" (Answer at page 15). The Examiner simply expects Appellant to "take his word for it."

Appellant submits that unless the Examiner can provide some authority to support his allegation, the term "constraint" should be construed based on the description in the Application including the examples of "constraints" (e.g., on page 9 of the Application) and the example of how constraints are used in an integer program which may be solved to determine the set of winning bids (Application at page 10, line 16-page 11, line 11). Nowhere are such constraints disclosed by Ausubel

### Claim 13

With respect to claim 13, Appellant would again point out that Ausubel does not teach or suggest *"generating a proposal, based on the constraints specified by the participant, using a column generation formulation"*. Indeed, the Examiner surprisingly attempts to support his position that Ausubel suggest a **column generation formulation** by stating simply that "Fig. 3D displays bid data in a column".

Again, Appellant would point out that in the field of mathematics, the term "column generation" may be defined as an algorithm for solving linear programs (e.g.,

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large linear programs) in which only the variables which have the potential to improve the objective function--that is, to find variables with negative reduced cost (assuming without loss of generality that the problem is a minimization problem) may be generated.

Thus, the Examiner's analysis is superficial and overly simplistic. In fact, nowhere in Figure 3D, or anywhere else, does Ausubel teach or suggest an algorithm for solving linear programs (e.g., large linear programs).

#### Claim 14

With respect to claim 14, Appellant would again point out that nowhere do the cited references teach or suggest a computer implemented method for facilitating an auction including **formulating a winner determination problem**, with constraints specified by the participant, as an **integer problem** (lines 9-10 of page 8).

#### Claims 3-5

With respect to dependent claims 3-5, Appellant would point out that the Examiner simply reiterated his rejection of these claims from the final Office Action, and ignored Appellants arguments with respect to these claims.

Indeed, as pointed out by Appellant in his Appeal Brief, nowhere does McAfee teach or suggest suggest "*wherein the constraints characterize combinations of bids from the participant for the desired items within the auction system*" (as recited in claim 3), or "*enabling the auction system so that it is responsive to a budget constraint*" (as recited in claim 4), or "*wherein the budget constraint is specified by the participant*" (as recited in claim 5).

Indeed, in an SAA, as disclosed in McAfee, the additional "restrictions" are placed by the auctioning organization or seller and apply uniformly to all bidders. Thus, McAfee does not teach or suggest receiving at least one constraint (e.g., a restriction of the feasible solutions in an optimization problem) specified by a participant in the auction, wherein the constraint characterizes combinations of items desired by the participant

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within the auction system. Thus, McAfee certainly does not teach or suggest determining a winner in the auction, based on the constraint specified by the participant.

### VIII. CONCLUSION

In view of the foregoing, Appellant respectfully submits that claims 1-19, all the claims presently pending in the application, are clearly patentably distinct from the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to remove all rejections of claims 1-19.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 50-0510.

Date: 11/21, 2006

Respectfully Submitted,



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### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing was filed by facsimile with the United States Patent and Trademark Office, Examiner Chencinski, Siegfried E. Group Art Unit # 3628 at fax number (571) 273-8300 this 21<sup>st</sup> day of November, 2006.



Phillip E. Miller  
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